NOTICE OF PROPOSED RULEMAKING FILING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

Department of Human Services, Aging and People with Disabilities (APD)		411
Agency and Division Name		Administrative Rules Chapter Number

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FILING CAPTION
(Must be 15 words or fewer)

APD: Amending rules related to adult foster home standards of care

Last Date and Time for Public Comment: Written comments may be submitted via email to apd.rules@dhsoha.state.or.us or mailed to Kristina Krause at 500 Summer Street NE, E-02, Salem, OR 97301 until **12/2/2021 at 5 p.m.**

		TELECONFERENCE ONLY +1 (971) 277-2343	
11/18/2021	2 p.m. – 3 p.m.	Conference ID: 747712087#	Staff
Hearing Date	Time	Address	Hearings Officer

HEARING NOTES: If you wish to provide comment, please call in to the teleconference number no later than 15 minutes after the start time listed.

Everyone has a right to know about and use DHS|OHA programs and services. DHS|OHA provides free help. Some examples of the free help DHS|OHA can provide are sign language and spoken language interpreters, written materials in other languages, braille, large print, audio or other formats. If you need help or have questions, please contact Kristina Krause at 503-339-6104, apd.rules@dhsoha.state.or.us or 711 TTY at least five business days before the hearing.

RULEMAKING ACTION

List each rule number separately (000-000-0000) below. Attach proposed, tracked changed text for each rule at the end of the filing.

AMEND:

411-051-0130

RULE SUMMARY:

411-051-0130 Standards for Medications, Treatments and Therapies
Proposed amendment clarifying that residents shall not have access to the locked medication cabinet containing resident medications.

STATEMENT OF NEED AND FISCAL IMPACT

Need for Rule(s):

The Oregon Department of Human Services (Department) is proposing to permanently amend rules in chapter 411, division 051 to ensure that residents do not have access to medications belonging to other residents.

Other changes may be made to OAR 411-051-0130 to correct grammatical errors, ensure consistent terminology, address issues identified during the public comment period, and to improve the accuracy, structure and clarity of the rule.

Fiscal and Economic Impact:

The Fiscal and Economic Impact is stated below in the Department's statement of Cost of Compliance.

Statement of Cost of Compliance:
(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

State Agencies: The Department estimates that there will be no fiscal impact to units of local government.

Units of Local Government: The Department estimates that there will be no fiscal impact to units of local government.

Consumers: The Department estimates that there will be no fiscal impact to consumers.

Providers: The Department estimates that there will be no fiscal impact providers.

Public: The Department estimates there will be no fiscal or economic impact on the public.

(2) Effect on Small Businesses:
(a) Estimate the number and type of small businesses subject to the rule(s);

There are approximately 1,400 Aging and People with Physical Disabilities Adult Foster Homes that are subject to these rules.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

The proposed changes impact providers as described above in the Department's statement of cost of compliance.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The proposed changes impact providers as described above in the Department's statement of cost of compliance.

Describe how small businesses were involved in the development of these rule(s)?

A small business, or representative of a small business, as defined in ORS 183.310 participated on the Administrative Rule Advisory Committee. Small businesses will also be included in the public review and comment period.

Documents Relied Upon, and where they are available:

None.

Was an Administrative Rule Advisory Committee consulted? Yes.

If not, why not?

/s/ Mike McCormick, Interim Director, Aging and People with Disabilities 9/27/2021

Signature Date

DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 51

ADULT FOSTER HOMES FOR OLDER ADULTS OR ADULTS WITH PHYSICAL DISABILITIES - STANDARDS OF CARE

411-051-0130 Standards for Medications, Treatments, and Therapies

(1) MEDICATIONS. The licensee and caregivers must demonstrate an understanding of each resident's medication administration regimen, including the reason for the medication, specific instructions, the medication’s actions, and common side effects. Medication resource material must be readily available at the home and include:

(a) The product or drug information sheet;

(b) A current drug manual; or

(c) Internet access to a drug reference website that is readily available for all caregivers.

(2) WRITTEN ORDERS. The licensee or administrator must obtain and place a signed order in the resident's record for any medications, dietary supplements, treatments, or therapies that have been ordered by a prescribing practitioner. The written orders must be carried out as prescribed unless the resident or the resident's legal representative refuses to consent. The prescribing practitioner must be notified if the resident refuses to consent to an order.

(a) CHANGED ORDERS. Changes to a written order may not be made without a prescribing practitioner order. The prescribing practitioner must be notified if the resident refuses to consent to the change order. Changes to medical orders obtained by telephone must be followed-up with signed orders within seven calendar days. Changes in the dosage or frequency of an existing medication require a new properly labeled and dispensed medication container. If a new

properly labeled and dispensed medication container is not obtained, the change must be written on an auxiliary label attached to the medication container, not to deface the existing original pharmacy label, and must match the new medication order. Attachment of the auxiliary label must be documented in the residents' record. (See section (6)(d) of this rule).

(b) DOCUMENTATION OF CHANGED ORDERS. Attempts to obtain the signed written changes must be documented and readily available for review in the resident's record. The resident's medications, including medications that are prescribed, over-the-counter medications, and home remedies, must be reviewed by the resident's prescribing practitioner or pharmacist at least annually. The review must be in writing, include the date of the review, and contain the signature of the prescribing practitioner or a pharmacist.

(3) MEDICATION SUPPLIES. The licensee or administrator must have all currently prescribed medications, including PRN medications, and all prescribed over-the-counter medications available in the home for administration. Refills must be obtained before depletion of current medication supplies. Attempts to order refills must be documented in the resident's record.

(4) HEALTH CARE PROFESSIONAL ORDERS (IMPLEMENTED BY AFH STAFF). The licensee or administrator who implements a hospice, home health, or other licensed medical professional-generated order must:

(a) Have a copy of the hospice, home health, or licensed medical professional document that communicates the written order.

(b) Transcribe the order onto the medication administration record (MAR).

(c) Implement the order as written.

(d) Include the order on subsequent medical visit reports for the prescribing practitioner to review.

(5) HOSPICE AND HOME HEALTH ORDERS (IMPLEMENTED BY NON-AFH STAFF). A licensee or administrator must allow a resident to receive

hospice services. The licensee or administrator who provides AFH services to a recipient of hospice or home health services, but who does not implement a hospice or home health-generated order must:

(a) Have a copy of the hospice or home health document that communicates the written order.

(b) Include the order on subsequent medical visit reports for the prescribing practitioner to review.

(6) MEDICATION ADMINISTRATION RECORD. A current, written MAR, or electronic MAR (see OAR 411-050-0755(4)), must be kept for each resident and must:

(a) List the name of all medications administered by a caregiver, including over-the-counter medications and prescribed dietary supplements. The MAR must identify the dosage, route, date, and time each medication and supplement is to be given.

(b) Identify any treatments and therapies administered by a caregiver. The MAR must indicate the type of treatment or therapy and the time the procedure must be performed.

(c) Be immediately initialed by the caregiver administering the medication, treatment, or therapy as it is completed. A resident's MAR must contain a legible signature that identifies each set of initials.

(d) Document changed and discontinued orders immediately showing the date of the change or discontinued order. A changed order must be written on a new line with a line drawn to the start date and time.

(e) Document missed or refused medications, treatments, or therapies. If a medication, treatment, or therapy is missed or refused by the resident, the initials of the caregiver administering the medication, treatment, or therapy must be circled, and a brief, but complete, explanation must be recorded on the back of the MAR.

(7) PRN MEDICATIONS. Prescription medications ordered to be given "as needed" or "PRN" must have specific parameters indicating what the

medication is for and specifically when, how much, and how often the medication may be administered. Any additional instructions must be available for the caregiver to review before the medication is administered to the resident.

(a) PRN DOCUMENTATION. As needed medications must be documented on the resident's MAR with the time, dose, the reason the medication was given, and the outcome.

(b) PRN ADVANCE SET-UP. As needed medications may not be included in any advance set-up of medication.

(8) PSYCHOTROPIC MEDICATIONS.

(a) A licensee or administrator is not required to request an evaluation of a resident's use of a psychotropic medication if the resident is admitted to the home and the resident has been prescribed the psychotropic medication for a condition that is currently monitored by a physician, nurse practitioner, physician assistant, or mental health professional and the written order for the psychotropic medication is in the resident's record.

(b) If a resident is admitted to a home with no documented history as to the reason for taking a psychotropic medication, or if the licensee or administrator requests medical professional intervention to address behavioral symptoms, the licensee or administrator must request a physician, nurse practitioner, physician assistant, or mental health professional evaluate the resident's need for the psychotropic medication and the intended effect of the medication, common side effects, and circumstances for reporting. The evaluation request must be documented in the resident's record and include:

(A) The unmet need resulting in the resident's behavior.

(B) Non-pharmacological interventions to be used instead of or in addition to psychotropic medication, if applicable. Alternative interventions must be tried as instructed by a licensed medical professional and the resident's response to the alternative interventions must be documented in the resident's record before administering a psychotropic medication.

(C) A plan, which includes a specified timeframe, for reassessment by the resident's prescribing physician, nurse practitioner, physician assistant, or mental health professional.

(c) When a psychotropic medication is ordered by a prescribing practitioner other than the resident’s primary care provider, the licensee or administrator is responsible for notifying the resident’s primary care provider of that medication order within 72 hours of when the order was given. This includes weekends and holidays. Notification may be either by telephone or electronic submission and must be documented.

(d) The prescription and order for a psychotropic medication must specify the dose, frequency of administration, and the circumstance for use (i.e., specific symptoms). The licensee and all caregivers must be aware of and comply with these parameters.

(e) The licensee and all caregivers must know the intended effect of a psychotropic medication for a particular resident and the common side effects, as well as the circumstances for reporting to the resident's physician, nurse practitioner, physician assistant, or mental health professional. The licensee and other caregivers must know all non-pharmacological interventions and use those interventions as directed by the prescribing practitioner or the registered nurse.

(f) The resident's care plan must identify and describe the behavioral symptoms the psychotropic medications are prescribed for and a list of all interventions, including interventions that are non-pharmacological and medications.

(g) Psychotropic medications must never be given to discipline a resident or for the convenience of the caregivers.

(9) MEDICATION CONTAINERS AND STORAGE. The licensee or administrator must ensure the resident’s prescription medications are packaged in a manner that reduces errors in the tracking and administration of the drugs, including, but not limited to, the use of unit dose systems or blister (bubble) packs. This paragraph does not apply to residents receiving pharmacy benefits through the United States

Department of Veterans Affairs if the pharmacy benefits do not reimburse the cost of such packaging.

(a) MEDICATION CONTAINERS. Each of the resident's prescribed medication containers, including bubble packs, must be clearly labeled by the pharmacy. All medications, including over-the-counter medications, must be in the original container, except as indicated in (9)(b) of this rule. Medications stored in advanced set up containers are required to be labeled as described in these rules.

(b) ADVANCED SET-UP. The licensee or administrator may set-up each resident's medications for up to seven calendar days in advance (excluding PRN medications) by using a closed container manufactured for the advanced set-up of medications.

(A) If used, each resident must have their own container with divisions for the days of the week and times of day the medications are to be given.

(B) The container must be clearly labeled with the resident's name, name of each medication, time to be given, dosage, amount, route, and description of each medication that includes the color, shape and any markings according to the label.

(C) The container must be stored in the locked area with the residents' medications.

(c) OVER-THE-COUNTER PRODUCTS. Over-the-counter products such as medications, vitamins, and supplements purchased for a specific resident's use must be marked with the resident's name. Over-the-counter items in stock bottles (with original labels) may be used for multiple residents in the home and must be clearly marked as the house supply.

(d) STORAGE OF RESIDENT MEDICATION. All resident medications, including over-the-counter medications, must be stored as directed by the manufacturer and kept in a locked, central location that is cool, clean, dry, not subject to direct sunlight or fluctuations in temperature.

(A) Resident medications must be stored separately from medications belonging to the licensee, caregivers, and all other non-residents.

(B) Medications requiring refrigeration must also be locked and stored separately from non-resident medications.

(C) Residents shall not have access to medications belonging to other residents.

(e) STORAGE OF NON-RESIDENT MEDICATION. All non-resident medications, including non-resident medications that must be refrigerated, must be kept locked and separate from resident medications. Residents shall not have access to medications belonging to the licensee, caregivers, other household members, or pets.

(10) DISPOSAL OF MEDICATION. Outdated, discontinued, recalled, or contaminated medications, including over-the-counter medications, may not be kept in the home and must be disposed of within 10 calendar days of expiration, discontinuation, or the licensee or administrator 's knowledge of a recall or contamination. The licensee or administrator must contact the local DEQ waste management company in the home's area for instructions on proper disposal of unused or expired medications. Prescription medications for residents that have died must be disposed of within 24 hours according to section (11) of this rule.

(a) TRANSDERMAL PATCHES. Used transdermal patches and unused patches, such as when the order was discontinued, or the patches have expired, must be folded in half with the sticky side together and disposed of as directed on the product information sheet or by the pharmacy.

(b) ITEMS CONTAMINATED WITH BODILY FLUIDS. Contaminated disposable supplies such as bandages, dressings, gauze, gloves, masks, and other supplies that are not sharps, but may have come into contact with body fluids, must be disposed of in a closed plastic bag, and placed out of residents’ reach in the garbage bin.

(11) DOCUMENTATION OF DISPOSAL. The disposal of a resident's medication must be documented in the resident's record and the documentation must be readily available. Documentation must include the name of each drug destroyed, the number of remaining pills, liquid, or patches, the date and time destroyed, and the signature of each staff that counted the medication.

(a) The disposal of a controlled substance must be witnessed by a caregiver who is 18 years of age or older and signed by both caregivers.

(b) Documentation regarding the disposal of medications, including controlled substances, must be available in the resident’s record and include:

(A) The date of disposal.

(B) Description of the medication, (i.e., name, dosage, and amount being disposed).

(C) Name of the resident for whom the medication was prescribed.

(D) Reason for disposal.

(E) Method of disposal.

(F) Signature of the person disposing of the medication.

(G) For controlled substances, the signature of the caregiver who witnessed the disposal according to this rule.

(12) SELF-ADMINISTRATION OF MEDICATION. The licensee or administrator must have a prescribing practitioner written approval for a resident to self-medicate. A resident able to handle his or her own medical regimen may keep his or her medications in his or her own room in a lockable storage area or device. Medications must be kept locked except those medications on the residents' own person. The licensee or administrator must notify the prescriber of the medication if the resident shows signs of no longer being able to self-medicate safely.

(13) INJECTIONS. Subcutaneous, intramuscular, and intravenous injections may be self-administered by a resident if the resident is fully independent in the task or may be administered by a relative of the resident or an Oregon licensed registered nurse (RN). An Oregon licensed practical nurse (LPN) may give subcutaneous and intramuscular injections. A caregiver who has been delegated and trained by a registered nurse under provision of the OSBN (OAR 851-047-0000 to 851-047-0040) may give subcutaneous injections. Intramuscular and intravenous injections may not be delegated. (See OAR 411-050-0720(15) for storage and disposal requirements of sharps, including, but not limited to used needles and lancets).

(14) PHYSICAL RESTRAINTS. Physical restraints may only be used when required to treat a resident's medical symptoms or to maximize a resident's physical functioning. Physical restraints may only be used after a written assessment is completed as described below and all alternatives have been exhausted.

(a) Licensees and caregivers may use physical restraints in AFHs only in compliance with these rules (See OAR 411-051-0105).

(b) INDIVIDUALLY-BASED LIMITATION. The use of any physical restraint requires an individually-based limitation as described in OAR 411-004-0040.

(c) ASSESSMENT. A written assessment must be obtained from the resident's physician, nurse practitioner, physician assistant, registered nurse, mental health clinician, physical therapist, or occupational therapist that includes consideration of all other alternatives.

(d) ORDERS. If it is determined that a physical restraint is necessary following the assessment and trial of other measures, the least restrictive restraint must be used as infrequently as possible. The licensee or administrator must obtain a written order from the resident's physician, nurse practitioner, or physician assistant before the use of a physical restraint. The written order must include specific parameters, including the type of physical restraint, circumstances for use, and duration of use, including:

(A) Procedural guidance for the use of the physical restraint.

(B) The frequency for reassessment.

(C) The frequency and procedures for nighttime use.

(D) Dangers and precautions for using the physical restraint.

(e) Physical restraints may not be used on an as needed (PRN) basis in an AFH.

(f) CONSENT. Physical restraints must not be used without first obtaining the written consent of the resident or the resident's legal representative.

(g) DOCUMENTATION. If it is determined a physical restraint is necessary following the assessment and trial of other measures, the written order for the use of a physical restraint must be documented in the resident's care plan explaining why and when the restraint is to be used, along with instructions for periodic release. Any less restrictive, alternative measures planned during the assessment, and cautions for maintaining the resident's safety while restrained, must also be recorded in the resident's care plan. The resident's record must include:

(A) The completed assessment as described in this rule.

(B) The written order authorizing the use of the physical restraint from the resident's physician, nurse practitioner, or physician assistant.

(C) Written consent of the resident or the resident's legal representative to use the specific type of physical restraint.

(D) The reassessments completed by a medical professional as described in OAR 411-051-0105(3)(c)(E).

(h) DAYTIME USE. A resident physically restrained during waking hours must have the restraints released at least every two hours for a

minimum of 10 minutes and be repositioned, offered toileting, and provided exercise or range-of-motion exercises during this period. The use of restraints, restraint release, and activities that occurred during the release period must be documented in the resident's record.

(i) NIGHTTIME USE. The use of physical restraints at night is discouraged and must be limited to unusual circumstances. If used, the restraint must be of a design to allow freedom of movement with safety. The frequency of night monitoring to address resident safety and care needs must be determined in the assessment. Tie restraints of any kind must not be used to keep a resident in bed.

(j) If any physical restraints are used in an AFH, the restraints must allow for quick release at all times. Use of restraints may not impede the three-minute evacuation of all occupants of the home.

(k) Physical restraints may not be used for the discipline of a resident or for the convenience of the AFH.

Stat. Auth.: ORS 127.520, 409.050, 410.070, 413.085, 441.373, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 409.050, 410.070, 413.085, 441.373, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991